G-002/AI-95-239

ORDER APPROVING AGREEMENT, GRANTING VARIANCE, AND REQUIRING FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs	Chair
Tom Burton	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner
Don Storm	Commissioner

In the Matter of a Petition by Northern States Power Company Gas Utility for Approval of an Affiliated Interest Agreement with Viking Gas Transmission Company for a Pipeline

ISSUE DATE: November 27, 1995

DOCKET NO. G-002/AI-95-239

ORDER APPROVING AGREEMENT, GRANTING VARIANCE, AND REQUIRING FILINGS

PROCEDURAL HISTORY

On March 20, 1995, Northern States Power Gas Utility (NSP or the Company) filed a petition for Commission approval of a reimbursement agreement with its affiliate, Viking Gas Transmission Company (Viking).

Under the NSP/Viking agreement, NSP would reimburse Viking the estimated $138,900 cost of installing a pipeline tap for the distribution system NSP planned to install in Taylors Falls. Viking would record the reimbursement as a contribution in aid of construction, in accordance with its FERC-approved gas tariff.

On March 31, 1995, NSP filed a supplemental petition seeking a variance to Minn. Rules, Part 7825.2100. This rule requires utilities to receive Commission approval of affiliated interest agreements prior to entering into the agreements.

On May 16, 1995, the Department of Public Service (the Department) filed comments recommending approval of the NSP/Viking agreement with modifications.

On June 5, 1995, NSP filed reply comments. While the Company agreed with most of the Department's recommendations, it opposed the Department's recommendation to require an audit of NSP's cost records associated with the agreement.

On November 2, 1995, the matter came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. COMMENTS OF THE PARTIES

A. NSP

NSP stated that it chose to deal with its affiliate, Viking, because Viking was the only interstate pipeline in close proximity to Taylors Falls, and because a tap off the Viking pipeline was the least costly, most efficient, and most timely option. The Company also noted that the Viking connection could be used to backfeed the NSP gas distribution system serving the Chisago Lakes area, maintaining the reliability of gas service to customers in that area.

NSP argued that it was not required by its established procedures to obtain competitive bids in this instance, because Viking is the only pipeline supplier which is a viable option to serve Taylors Falls. NSP stated that the requirement to make a contribution in aid of construction for new facilities installed by Viking is determined by Viking's FERC-approved tariff.

NSP opposed the Department's recommendation of a detailed audit of pipeline connection construction costs. NSP reasoned that it is at risk for proving the prudence of the cost in rate proceedings, so it has a strong incentive to pay the lowest cost possible.

In its petition, NSP requested a variance from Minn. Rules, Part 7825.2100, which requires Commission approval prior to a utility's entering into an affiliated agreement. NSP stated that it sought the variance because the agreement must be executed before Viking can seek any FERC approvals. Also, NSP does not plan to begin construction of the Taylors Falls expansion project until the Commission acts on this petition and an associated petition for a new area surcharge, filed in Docket No. G-002/M-95-443.

B. The Department

The Department stated that NSP's petition, together with the Company's responses to Department information requests, were sufficient to comply with the statutes and rules governing affiliated interest filings.

Under Minn. Stat. § 216B.48, subd. 3, an affiliated interest agreement must be found reasonable and in the public interest in order to be approved by the Commission. In determining the public interest factor, the Department questioned NSP's statement that the Viking pipeline was the only available option for serving Taylors Falls. In fact, running a tap from a Northern Natural Gas (NNG) pipeline in Wisconsin was an alternative for NSP. The Department agreed, however, that Viking was probably the less expensive and more practical alternative.

While the Department believed that NSP should have followed its policy procedure and used competitive bidding when selecting its pipeline supplier, the Department recommended against penalizing Taylors Falls residents by further delaying the process.

The Department recommended granting NSP its requested variance. Although the Company should have sought Commission approval before entering into the affiliate agreement, the

Department believed that enforcement of the rule would negatively impact Taylors Falls residents. The Department also noted that the Company would not be constructing or installing any facilities prior to Commission approval.

Although the Department recommended approval of the contract and associated variance, the agency was concerned regarding the actual cost of the connection. The Department recommended that the Commission require NSP to file cost records and an audit report.

II. COMMISSION ACTION

A. NSP's Compliance with Statutes and Rules

The Commission agrees with the Department that NSP provided enough information in its petition and responses to information requests to enable the Commission to assess the affiliated interest agreement. The filings comply with the requirements outlined in the Commission's January 19, 1995, ORDER APPROVING AFFILIATE TRANSACTIONS, GRANTING VARIANCE, AND REQUIRING FILINGS in another affiliated interest proceeding, Docket No. G-002/AI-94-670.

B. Reasonableness of the Agreement

The Viking pipeline tap will be used to serve Taylors Falls and to reinforce gas supply in the Chisago Lakes area. The Viking option will also make gas available to the Taylors Falls area sooner than the NNG option. Piping off the Viking line will be more direct, eliminating the need for the extensive environmental studies which could be necessary for the NNG tap. For these reasons, the Commission finds that NSP's choice of the Viking tap was not unreasonable under the standards of the affiliated interest statute.

At the same time, the Commission finds that the relative costs of the piping options were not made clear by the Company. Uncertainties remain regarding such issues as the need for supply reinforcement in the Chisago Lakes area, the rate of customer growth, the cost of FERC environmental studies for the NNG option, operating costs for a tap into the NNG pipeline, and a comparison of the cost of transporting only on NNG versus transporting on both NNG and Viking.

Given the uncertainty of the cost information, the Commission agrees with the Department that the Company should be required to submit actual cost information for the Viking facility expansion. The Commission will not require an audit of the Viking construction costs, but will require that the cost data submitted be detailed and complete.

C. Bidding

NSP argued that it was not required to engage in competitive bidding because the Viking pipeline tap was the only viable option and because Viking constructed the tap pursuant to its FERC-approved tariffs. The Commission agrees with the Department that the choice of Viking over the NNG option was much less clear-cut than the Company maintained. The Commission notes that NSP remains at risk for future recovery of the costs incurred in this matter. In order to preserve a record for future examination of these costs, the Commission will require NSP to maintain a complete record of the NSP/Viking agreement, including all of the bids submitted where a bidding process occurred, for future review by the Department and the Commission. Minn. Rules, Part 7825.2300.

D. The Requested Variance

Minn. Rules, Part 7825.3200 provides that a variance may be granted when the following criteria are fulfilled: enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest; and granting the variance would not conflict with standards imposed by law.

In this case, enforcement of Minn. Rules, Part 7825.2100, which requires Commission approval prior to entering into an affiliate transaction, would impose an excessive burden upon the Company and upon Taylors Falls gas customers. Taylors Falls residents would be blocked from receiving gas service in the near future if NSP's agreement with Viking were invalidated. NSP would be forced to begin anew negotiating a pipeline connection for the Taylors Falls area. For these reasons, imposition of the rule would place an excessive burden upon the parties.

Granting the variance to Minn. Rules, Part 7825.2100 would not adversely affect the public interest. The Company filed the agreement with the Commission prior to the requested effective date, April 1, 1995. The Commission has found that the selection of the Viking tap was not unreasonable.

Finally, granting the variance would not conflict with standards imposed by law.

For these reasons, the Commission will grant NSP a variance from Minn. Rules, Part 7825.2100 to allow the NSP/Viking agreement to be effective from the requested date, April 1, 1995.

ORDER

1. The Commission approves NSP's March 20, 1995, petition for approval of an affiliated interest agreement.

2. The Commission grants NSP a variance to Minn. Rules, Part 7825.2100, to allow the agreement to be effective from the requested date of April 1, 1995.

3. Within 30 days of receipt of the final bill from Viking, NSP shall file actual cost information for the Viking facility expansion.

4. NSP shall maintain a complete record of the Viking/NSP agreement, including all of the bids submitted where a bidding process occurred, for future review by the Department and Commission.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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